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Assemblée législative de l'Ontario

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FINAL REPORT ON REFERENDA

1st Session, 36th Parliament
46 Elizabeth II

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Ontario

LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

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COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

The Honourable Chris Stockwell, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on the Legislative Assembly has the honour to present its Final Report on Referenda and commends it to the House.

Joseph N. Tascona, M.P.P.
Chair

Queen's Park
June 1997

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INTRODUCTION

Four-and-one-half years ago the people of Ontario participated in a national referendum on the Charlottetown Accord. For most Ontarians, this vote represented their first and only experience with a provincial referendum (albeit as part of a national vote). Provincial referenda in Ontario, however, are not new, with the first such vote having been held in 1894.

Recently, the concept was addressed in a Consultation Paper released by the Government of Ontario. Entitled *Your Ontario, Your Choice: A Preliminary Look at the Referendum Alternative*, the Paper highlighted various issues which had to be examined in developing a referendum strategy for Ontario. These issues ranged from the scope of a referendum and the method of initiation to such matters as the legal consequences of the vote and the wording of ballot questions. The Government explained that the questions which it posed were illustrative only and it welcomed advice on any referendum-related topic that individuals and groups felt were important.

In June 1996 the Standing Committee on the Legislative Assembly was authorized by the House to review and report on the matter of referenda as set out in the Consultation Paper, at that point not yet released. The Paper was published in August 1996; notice of the hearings was then advertised; and public hearings were subsequently conducted in Toronto in September and November 1996.

During the hearings, the Committee also heard testimony from witnesses in other communities. Video-conferencing with Vancouver and tele-conferencing with Ottawa and Manotick were both used, and enabled the Committee to broaden participation in a cost-efficient manner. A list of all the witnesses who spoke before the Committee in Toronto and elsewhere appears in Appendix C to this report.

In November 1996 the Committee started its deliberations on the issues raised in the Consultation Paper and during these hearings. After careful and lengthy debate, and the tabling of an interim report in May 1997, we have arrived at the many conclusions and recommendations expressed in this final report.

The Committee wishes to express its thanks to all those individuals and groups who shared their knowledge and concerns. We have been impressed by the high quality of the submissions, both oral and written. In addition, the Committee wishes to express its appreciation to all of the legislative staff who assisted us in our work.

CONCEPT OF REFERENDA

Background

In its most commonly-used sense, a referendum denotes a vote on an issue of public policy by all members of a community. As such, it is considered to be a form of "direct democracy". (For the purposes of our report, unless otherwise indicated, this form of direct democracy denotes both binding and non-binding votes, howsoever initiated. Thus, it includes advisory votes—also known as plebiscites—and citizen initiatives.)

Although referenda may be conducted within Ontario at the municipal level, Ontario does not have any legislation authorizing the holding of provincial referenda. Every other province, however, apart from Nova Scotia, has such legislation. Legislation also exists for the holding of federal and territorial referenda. Appendix D contains an outline of these legislative provisions.

Evaluation and Scope of Referenda

The Committee believes that the concept of provincial referenda, which has been codified so extensively across Canada, should be legislated here as well. Most of the submissions supported the concept (although as explained below they differed in terms of its implementation), and highlighted such themes as accountability and public trust in government.

We see referenda as helping to increase the accountability of government and the Legislature to the citizens of Ontario. The referendum tool serves as a means of improving public participation in the decision-making process, and enhancing the legitimacy of that process. It can accordingly strengthen confidence in difficult public policy decisions, and in our institutions of government. Referenda, then, can help to counter cyncism about politics. A further benefit of referenda is derived from the campaigns themselves, which can serve to educate the public about policy issues.

We also consider referenda to be an especially appropriate tool of democracy as Ontario approaches the 21st century. Speaking in a general sense, 100-200 years ago when parliamentary government was in its infancy in Ontario, the distance between the "governors" and the "governed" was quite acute. The "governors" tended to have more education, and saw more easily beyond their own local sphere to what was occurring in the wider world. Today, however, this kind of distance from the "governed" has been erased. The broader population is educated, and has access to more information than ever before in our history, as well as the time to assess that information. Consequently, some decisions which

previously were left to representatives of the people can now be made by an informed, wider population in the form of a referendum.

One of the objections to referenda raised before the Committee held that referenda bypass elected representatives and, in so doing, undermine the legitimacy of Parliament. In this regard, it was said that referenda fundamentally change both the relationship between voters and the government and the nature of the discourse for determining what is in a community's best interests. For instance, it was claimed that under a system of referenda, elected representatives become agents of the electorate, who must do what the majority of voters want, rather than determine what policies are in the best interests of society.

This perspective appears to view referenda as an undesirable *alternative* to our current system of representative democracy. We agree that referenda should not be used as an alternative or replacement; rather we favour their use as a *supplement* to representative government. Under our recommendations, the parliamentary system will remain the basic institutional form for democracy in Ontario. The holding of referenda, however, under certain circumstances can help to improve that system. But to echo the sentiments of one witness, we are not advocating "three referenda before breakfast every day".

Other concerns regarding referenda raised before the Committee included the lack of background knowledge and/or time for the average citizen to properly deliberate on the matters in question; the Yes/No nature of the voting on complex issues; the divisive effect and cost of the campaign; and the perceived threat to minority rights. We wish to point out that these concerns are not unique to referenda. As one witness suggested in response to some of these arguments, exactly the same criticism might be made of the general election procedure in Ontario. Just as our electoral system assumes, for example, that a well informed public is perfectly capable of making sensible collective decisions on complex issues, so should a system allowing for referenda. As mentioned previously, with the information explosion of today, voters have access to much more information than at any time in our history.

One of the issues listed above—minority rights—was a principal concern of witnesses opposed to referenda. This issue is discussed more fully later in this report, but we feel that our proposed framework, which includes a role for an independent Referendum Commission in protecting minority rights, will help to ensure that such rights will not be threatened. The issue of costs is also discussed later in more detail in the context of the timing of referenda.

We do not favour restricting referenda to particular topics, beyond the requirement that the issue in question be one that can be translated into a bill. The seriousness of referenda requires that they be held only on issues that can be passed into provincial law. Provided this criterion is met, the issue need not apply to the entire province, and might be regional in scope. But whatever their geographical basis, referendum issues should be matters of important public concern.

The legislative framework for referenda must be general enough to ensure flexibility. We recognize that it is just too difficult to predict all the specific issues on which a referendum might be appropriate at some point in time.

The Committee recommends that:

1. The Government of Ontario should introduce legislation authorizing the holding of provincial referenda. Such referenda should be permissible on any topic within the jurisdiction of the Province of Ontario, but should occur within the legislative framework set forth in the recommendations which follow. The topic of the referendum must be a measure which requires the passage of a bill (with the exception of a constitutional referendum, where implementation would require the passage of a constitutional resolution).

Initiation and Legal Effect of Referenda

Referenda may be categorized in one of three ways, depending on their origin:

- *Discretionary (or Permissive) Referenda.* The government or the Legislature has the discretion as to whether or not to hold the referendum;

- *Mandatory Referenda.* A statute requires that a referendum be held under certain circumstances;

- *Citizen Initiatives.* Citizens by petition may propose and require the holding of a vote on their own ballot questions.

As discussed below, our proposals encompass all three kinds of referenda. We believe they can be implemented within the existing constitutional system, and thus they should not require any kind of constitutional amendment. More particularly, they respect the distribution of legislative

powers between the federal and provincial levels of government, and we do not feel that they pose any contravention of the *Canadian Charter of Rights and Freedoms*. In addition, they do not affect the role of the Legislative Assembly or the Lieutenant Governor so as to require constitutional change. (Constitutional issues surrounding the role of the Assembly and the Lieutenant Governor under two other models of provincial referenda have been raised in the courts and are discussed in this report under "Citizen Initiatives".)

Discretionary Referenda

As pointed out in the Consultation Paper, a general principle of referendum legislation in several provinces holds that the government may initiate a referendum on "any matter of public concern". We support this principle and see it as consistent not only with our first recommendation, but also with the views of several witnesses who favoured referenda on major issues. It appears that in practice provinces with the power to hold referenda on "matters of public concern" do so on major issues only, such as constitutional amendments and balanced budget legislation (e.g. Saskatchewan in October 1991).

We note that one group explicitly stated that the initiation of a referendum should not be subject to the discretion of government. For this group, all referenda had to be a matter of statutory requirement. As discussed below, we accept the need for some referenda to be required by statute; but we also feel that authority for discretionary referenda offers flexibility to government to take into account all circumstances and should be an option.

We have decided that this discretion to order the holding of a referendum should rest formally with the Legislative Assembly, as representative of the people of Ontario. In reaching this conclusion, we have debated whether the Assembly must act by way of a special all-party Committee which would be subject to a unanimity requirement—in other words, whether a discretionary referendum would be held only upon the unanimous consent of the Members of this proposed legislative Committee.

Some Members of the Committee argued that such a requirement would underline the seriousness of referenda as a tool not to be used frivolously, and indeed that a unanimous Committee decision should be the only means of initiating a referendum. These Members held that a government had the power, by means of an established legislative process (involving three readings and referral to Committee), to bring forward bills on any subject matter for due debate in the House by all parties; they were concerned that a referendum provided the opportunity to offload the

responsibilities of governmental decision-making when issues became difficult, on to the public in the form of a very simple yes/no question. It was also said that the government of the day could manipulate a question so that the results did not truly reflect the sentiments of the general population about an issue.

We wish to reaffirm the seriousness of referenda as a tool to be used occasionally. However, it is the view of most Committee Members that the use of this tool should be based on a majority formula, which unlike unanimity, is basic to our legislative system. The principle of the accountability of the government to the Legislature rests on majority support in the House, not unanimity. More specifically, majority voting governs the Assembly's passage of legislation as well as constitutional amendments. One Member alone cannot block the passage of such measures.

We also do not consider the holding of referenda to represent an offloading of governmental responsibilities. As outlined earlier, a variety of principles, including governmental accountability to the people of Ontario and enhancing the legitimacy of public policy decisions, justify the occasional use of referenda for major issues. The other concern mentioned above—ensuring that a referendum question is drafted fairly—raises a significant matter which is addressed in the part of our report entitled "Defining the Issues for Voting"; under our proposals, final approval of a question will rest with an independent Referendum Commission.

The Committee recommends that:

2. The Legislative Assembly should have the discretion to order the holding of a referendum on any matter of public concern.

With respect to the consequences of a referendum, various proponents of referenda impressed upon us that the results must be binding. We agree that if votes were advisory only Ontarians would not have real power to effect change. Accordingly, later in this report, after discussing constitutional limitations, we recommend that both Assembly- and citizen-initiated referenda should have a particular kind of binding effect. (See Recommendation 10.)

Mandatory Referenda

Although the Committee received widely-varying opinions on the appropriateness of mandatory referenda (ranging from all referenda being

mandatory to none), more submissions called for mandatory referenda under certain circumstances, than were opposed. Some of the proposed topics/circumstances were:

- new taxes and increases in taxes;
- constitutional amendments;
- where the legislative process has reached a deadlock;
- where legislation implements policy not specifically contained in the platform of the governing party at the time of the most recent election;
- where the government proposes to take a decision that would for practical purposes bind future governments (the witness included the privatization of major public institutions, such as Ontario Hydro and the L.C.B.O., in this category);
- where the government proposes to fundamentally affect institutions that were created by the public will (the witness above cited Ontario Hydro here as well and appeared to be referring to the municipal referenda of 1907 and 1908 on the issue of municipalities signing contracts with Hydro); and
- issues pertaining to natural resources.

As explained below, the Committee was unable to reach a consensus on whether and when referenda should be made mandatory. Our discussion focused on the topics favoured by most of the proponents of mandatory referenda—constitutional amendments and/or issues of taxation. If mandatory referenda are to be held (as favoured by a majority of the Committee), the topics must be kept to a minimum as referenda must be an adjunct only to the parliamentary system.

Constitutional Amendments

The Constitution is Canada's most basic document, codifying its fundamental values, defining its national institutions, and dividing the exercise of lawmaking powers. As much as any document, it belongs to all of the people.

This proprietary interest of the people in the Constitution makes it all the more important that they should be consulted before it is amended. Although consultation can occur in many ways, several witnesses before the Committee favoured consultation in the form of a constitutional referendum. Some potential changes to the Constitution are so significant that one group vigorously opposed to referenda made an exception for a

national referendum on constitutional changes affecting all Canadians. Another group, whose brief highlighted the disadvantages of the overuse of direct democracy, considered constitutional amendments to be one of the few issues requiring a referendum.

The amending formula in the *Constitution Act, 1982* contains no provision whatsoever on the holding of constitutional referenda, either at the provincial/territorial or federal levels. Notwithstanding the absence of such a provision, the first ministers recognized the need for popular approval of constitutional changes when they agreed to submit the Charlottetown Accord to a national referendum. The moral authority of the popular vote was reflected in the death of the Accord, after it was rejected by a national majority and in six provinces.

A majority of the Committee has concluded that constitutional amendments should be made the subject of mandatory referenda. The kind of decision made by the first ministers regarding the Charlottetown Accord, then, should not be a matter of choice. Since the signing of the Meech Lake Accord, and especially with the referendum on the Charlottetown Accord, the public has rightfully come to expect that they will be able to vote on proposed constitutional changes. The Constitution binds citizens politically in a very fundamental way, and as a document which belongs to the people, they must have a say.

This majority position accordingly supports the approach of British Columbia and Alberta where constitutional referenda are a statutory requirement. Under British Columbia's *Constitutional Amendment Approval Act* the government cannot introduce a resolution for a constitutional amendment unless a referendum has first been conducted with respect to the subject matter of that resolution. The results of that referendum are binding on the government.

Similarly, under Alberta's *Constitutional Referendum Act* the government must hold a referendum before the Legislative Assembly votes upon a constitutional resolution. As in British Columbia, the results are binding on the government.[1]

Some Committee Members, however, reject the notion of any kind of mandatory referendum. It was argued that the holding of a referendum should represent a judgment call for a government based on its assessment of the issue at hand. This assessment would involve the following question: is the particular issue of such importance that it warrants the holding of a referendum? These Members thought that with respect to

[1] The Alberta Act also contains a provision for permissive referenda whereby the government may choose to hold a referendum on any constitutional matter.

constitutional amendments, the answer would generally be Yes, and that the referendum could be held under Recommendation 2.

The federal *Referendum Act* of 1992 adopts this discretionary approach with respect to constitutional matters. (The referendum on the Charlottetown Accord was held under the authority of this Act, with the exception of Quebec where it was held under provincial law.) The federal Act permits referenda on constitutional matters only, where considered to be in the public interest. But such referenda are discretionary, not mandatory.

Opposition to mandatory referenda was also expressed by those Committee Members who believe that a referendum should only be initiated by the unanimous agreement of an all-party Committee. The principles underlying this position were explained previously under "Discretionary Referenda".

The Committee recommends that:

3. The government should not introduce in the Legislative Assembly an amendment to the Constitution of Canada, unless a referendum has first been conducted with respect to the subject matter of that amendment, and approval of the voters has been obtained.

New Taxes

Members of the Committee were also unable to reach a consensus on the issue of mandatory tax referenda. A majority of the Members support a statutory requirement to hold referenda in the case of new taxes. In so doing, they draw a distinction between a tax and a fee. A tax has a public purpose, namely to generate revenue for the government. A fee, on the other hand, bears some relationship to the service provided. It is only required to be paid when seeking services in respect of which it is imposed.

The Committee received many submissions in favour of binding referenda before the imposition of a new tax or an increase in taxes. One organization, in fact, felt that tax referenda were so important that it wanted them mandated in a separate bill, rather than in a general referendum bill.

At the core of this majority position is the notion that taxes bind citizens economically, and that the level of taxation is fundamental both to the health of the economy of the Province, and to the economic well being of

the individual. If citizens are going to be bound in such a fundamental way, they must have a voice.

Two provinces—Manitoba and Alberta—have legislation requiring referenda before the adoption of certain tax measures. Manitoba's *Balanced Budget, Debt Repayment and Taxpayer Protection Act* prohibits the government from raising personal and corporate income taxes, the sales tax, and the payroll tax, unless it receives authority to do so in a referendum. There are two exceptions to this referendum requirement: (1) where the increase in tax rates is designed to restructure the tax burden, but is revenue neutral; and (2) where the increase results from changes in federal tax laws and is necessary to maintain provincial revenue or to give effect to a restructuring of federal/provincial taxation authority.[2]

The preamble to the *Alberta Taxpayer Protection Act* states that Alberta is the only province that does not have a general provincial sales tax, and that such a tax is not desirable. The Act requires that a binding referendum be held before the government introduces a bill imposing a general provincial sales tax. Recently, the Government of Alberta announced the intention of providing for another kind of tax referendum. In the Speech from the Throne of April 1996, it said that a bill would be introduced for Albertans' consideration and discussion that would cap personal and corporate income taxes, and other taxes, at current levels unless an increase was approved in a referendum.[3]

Those Committee Members opposed to mandatory referenda did not make any exception for tax matters. Some of these Members stressed that under our system of responsible government, the government is responsible for making tax decisions, and that governments stand or fall on tax policy. More particularly, the decision of a government whether or not to raise or lower a tax, or to bring in a new tax, is fundamental in determining whether the executive branch enjoys the confidence of the House. Mandatory tax referenda were seen as an abdication of that principle.

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[2] Thus, under the first exception, the corporate income tax rate could be increased, if the payroll tax rate were decreased, and the government received no extra revenue from the change. The second exception could apply, for instance, where the federal government reduces transfers to the provinces, but offers compensation in the form of increased "tax room". The "tax room" could assume the form of reduced federal personal income tax rates and allow for an increase in the provincial personal tax rate. Under the second exception, such an increase could take place so long as there was no increase in the total amount of income tax paid by taxpayers. The proportion belonging to Manitoba, however, would be higher. See Manitoba, Department of Finance, *The 1995 Manitoba Budget*, Budget Paper A[:]Balanced Budget, Debt Repayment and Taxpayer Protection, (Winnipeg: The Department, 1995), pp. 4 and 6; and Manitoba, Legislative Assembly, *Hansard: Debates and Proceedings*, 36th Parliament, 1st Session (14 June 1995): 1618.

[3] The Alberta Government has since introduced for first reading Bill 26, the *No Tax Increase Act*. For an outline of the Bill, see Appendix D to this report, footnote no. 3.

They would fundamentally change the relationship between the government and tax policy, and that between government and taxpayers.

On a more general level, it was said that governments were established to make and implement decisions; in a democratic society they were then judged on how well the people accepted those decisions and their implementation. The holding of mandatory tax referenda ran counter to these principles.

Some Members also expressed uncertainty over the term "new taxes" and whether it included, for instance, tax increases and user fees. When questioned during the hearings about user fees, some proponents of mandatory tax referenda had stated that such fees could be described as a form of taxation.

The Committee recommends that:

4. The government should not introduce in the Legislative Assembly a bill that imposes a new tax, unless a referendum has first been conducted with respect to the imposition of the tax in question, and approval of the voters has been obtained. An exception to this referendum requirement should apply in the case of revenue neutral changes in taxation.

Citizen Initiatives

As citizen initiatives are a form of referendum, our earlier analysis of the concept of referenda extends to initiatives. Some of that analysis is briefly repeated here for purposes of emphasis.

Most of the proponents of referenda before the Committee favoured the option of citizen initiation. Most Members of the Committee as well believe that this option can serve as a particularly effective means of empowering individuals and groups within the political process. Amongst other things, initiatives can serve as a vehicle by which the public can put forward reforms and raise issues which might otherwise not be addressed by elected officials. In an initiative, it is the citizenry, not the political elites or the media, who are determining what is an appropriate issue for a referendum.

In deciding to support the initiative option, we have considered various concerns surrounding the use of initiatives. These concerns include the potential lack of awareness by voters of the complexity of initiative measures, such as the economic and social implications (e.g. the effect on

a government of a financing initiative affecting tax revenue); the possible diminution of minority rights; and the potential for the campaign to be dominated by well financed special interest groups.

As mentioned previously, a well informed public should be capable of making decisions on complex matters, including the consequences of proposals; minority rights should be protected by our proposed legislative framework involving an independent Referendum Commission; and fairness during a campaign can be fostered through financing controls.

The Committee recommends that:

5. Statutory authority should be provided for the holding of citizen-initiated referenda, whereby citizens by petition may require that a referendum be conducted on any matter within the jurisdiction of the Legislature.

From a comparative perspective, two provinces—British Columbia and Saskatchewan—have legislation providing for citizen-initiated referenda. The legislation, however, differs significantly. At the most fundamental level, British Columbia's *Recall and Initiative Act* sets up a binding procedure requiring the introduction of a government bill, whereas initiatives under Saskatchewan's *Referendum and Plebiscite Act* are totally advisory in nature, and are consequently called plebiscites. This issue of the legal effect of an initiative vote is discussed in detail following Recommendation 9.

Petitions

Signature Threshold

The number of signatures required for a petition is critical to the effective functioning of the referendum process. If the threshold is too low, the process could become trivialized as well as very costly because of its excessive use. With regards to a low threshold, one witness remarked that if the petition process turns out to be too easy, voters will quickly demand that the conditions be made more challenging to prevent frivolous questions. On the other hand, if the threshold is set too high, the process will be unworkable and no referendum will ever take place. In such a case, cynicism directed against the political system will grow.

We received numerous submissions on the issue of signature threshold, with proposed levels ranging from 2% to 15% of the electorate. In proposing these figures, some favoured a percentage of the votes cast in the previous election whereas others looked to a percentage of the eligible voters in the province. We learned as well that in Saskatchewan the

threshold is 15% of the electors, whereas in British Columbia it is 10% but with a very strong geographic component—that is, 10% of the registered voters in each of the province's 75 electoral districts. The threshold in British Columbia (effective February 1995) was strongly criticized by a witness who had served as an independent member of the legislative Committee in that province which had looked at recall and initiative. He revealed that efforts to meet that threshold had yet to succeed.[4]

We feel that a threshold of 10% of eligible voters—a threshold put forward in several submissions—would contribute to an effective initiative process. It would be workable, yet at the same time it would prevent voting on frivolous issues. We also believe that to the extent a concern has been raised by 10% of the provincial electorate, its source in a geographical sense should not matter; the issue would warrant being the subject of a referendum. It would be difficult, however, for a measure to be approved at the next stage—the vote itself—if it had support in only one part of the province.

Members of the Committee also debated whether, at times, the 10% requirement should be regionally-based. The focus of the debate were issues which appeared to be regional in scope, although they would still be the subject of provincial legislation. There was a lack of agreement within the Committee on the extent to which a citizen-initiated matter should be characterized as regionally significant, and not of province-wide importance as well. A majority of the Committee determined that the province-wide implications warranted a province-wide threshold only.

On a practical level, the petition itself should be issued by an existing office—the Office of the Chief Election Officer.

The Committee recommends that:

6. An application for the issuance of an initiative petition should be made to the Office of the Chief Election Officer of Ontario (Elections Ontario). The application procedure should require a declaration that the applicant is eligible to vote in a referendum in Ontario.

7. An initiative petition must be signed by at least 10% of the eligible voters in the province in order for the initiative to be put on a referendum ballot.

[4] There is also a time limitation of 90 days in British Columbia for signature-gathering.

Time Limits

Time limits for signature-gathering are necessary if the initiative process is to have any degree of certainty. As with signature requirements, we received a variety of proposals respecting time limits. They ranged from 90 days to a minimum of one year or no maximum at all.

A time limit which is too stringent would be similar to a signature threshold which is too high. It could make the process unworkable and end up feeding voter cynicism; but too long a period leads to uncertainty. We think that a period of six months would strike an appropriate balance.

The Committee recommends that:

8. There should be a maximum period of 180 days to gather the signatures on a petition from the date of its issuance, and to submit it to the Legislative Assembly.

Gathering Signatures for Profit

Those witnesses who addressed the issue of paying signature canvassers were in agreement that there should be a prohibition against such practices. We think that a prohibition would prevent the "professionalization" of petition gathering often seen in the United States. It would also help to keep the number of referenda to a manageable level. Regarding this issue, one witness described the Californian system in particular as having spawned a group of companies which gathered signatures for profit. This witness, who was a strong proponent of initiatives, claimed that the result in California had been a large and perhaps unreasonable number of initiatives.

Under our recommendation, a prohibition would operate at two levels—that of the signature canvasser and that of the signatory to the petition.

The Committee recommends that:

9. It should be an offence for signature canvassers to receive any remuneration for the gathering of signatures or to provide any kind of inducement to an individual to sign, or to refrain from signing, a petition. A related offence should state that an individual must not accept an inducement to sign, or to refrain from signing, a petition.

Legal Effect: Role of Legislature and Government after Approval of a Measure

Constitutional Limitations: Court Decisions

As acknowledged in some of the submissions, over 70 years ago the constitutionality of two provincial models of citizen initiatives was tested in the courts. In 1919 and in 1922 the Judicial Committee of the Privy Council in England ruled on the validity of Manitoba's *Initiative and Referendum Act* (passed in 1916) and Alberta's *Direct Legislation Act* (passed in 1913), respectively. As these cases form part of the constitutional framework for our proposals and were commented upon by witnesses, we consider it helpful to briefly summarize them, as follows:

Manitoba: Under the Manitoba legislation, a proposed law initiated by electors and approved in a referendum became law automatically as though it were an Act of the Assembly. Enactment of such a law, then, did not require any action on the part of the Assembly, or the giving of royal assent by the Lieutenant Governor.

The Privy Council found the Manitoba Act to be invalid. In particular, it held that the bypassing of the Office of the Lieutenant Governor constituted an amendment of the Constitution of Manitoba that went beyond provincial powers under the *British North America Act, 1867.*

The Council did not consider it necessary to comment on whether the bypassing of the Legislative Assembly also made the Act invalid. The lower court, however—the Manitoba Court of Appeal—did say that the Constitution vested primary law-making powers for a province in a Legislature, which involved some form of representative assembly. Thus, it concluded that laws could not be enacted by direct vote of the people instead of by the Legislature itself.

Alberta: Alberta's initiative procedure differed from Manitoba's in several respects. Most significantly, it did not say that a proposed Act approved in a referendum automatically became law. Instead it imposed a duty on the Legislature to pass the Act without substantive amendments. Such an Act would come into force upon receiving royal assent.

A *Liquor Act* was passed pursuant to this procedure. In a case involving an offence under that Act, the Privy Council held that the Act was not invalid because it had been enacted in this way. It stated that a law was validly made by a provincial Legislature when it had been passed in accordance with the regular procedure of the House, and had received royal assent. A law that went through this process after an initiative vote was still an Act, even though it had been the statutory duty of the Legislature to pass it.

Constitutional Limitations: Submissions to the Committee

We heard differing views about the significance of these cases which, we note, focused on the role of the Legislature, not the role of the government, after popular approval of a measure. One witness, for instance, said that there were virtually no constitutional implications to proposals for referenda, apart from the need for compliance with the distribution of federal and provincial powers and with the *Charter of Rights*. Accordingly, he contended that the issue of constitutionality bordered on being a red herring. For this witness the law was extraordinarily clear, and it came out of the decision in the Manitoba case. For some other witnesses, the Alberta case served as the basis for their proposals on the consequences of a referendum vote for the Legislature.

On the other hand, the Ministry of the Attorney General referred to the kind of referenda process that could be achieved without constitutional amendment, and claimed that the law in this area was quite unsettled. Speaking in general terms, the Ministry did think, however, that very good arguments could be raised against most of the potential constitutional challeges to referenda proposals. On a more specific level, the Ministry commented on the constitutionality of some referendum provisions in British Columbia and Saskatchewan—in particular, the provisions whereby the government is required to implement the results of a referendum by such means as the introduction of a bill in the House. The Ministry felt that a constitutional challenge against such provisions probably would not succeed.

Another witness before the Committee considered the Privy Council to have contradicted itself somewhat in the two cases. He contended that this area of law was not well defined, and that it invited litigation.

When reviewing these submissions, the Committee discussed how the results of a referendum could be made binding upon the Legislature without the necessity of a constitutional amendment. Further research was conducted, which confirmed the uncertainty of the law in this area.

One commentator, for instance, has said that the Alberta decision violated a basic rule of parliamentary sovereignty—that is, that a legislative body cannot bind itself as to the substance, compared to the manner and form, of its future enactments. It was further stated that the Alberta legislation made the Legislature's role one of simply rubber stamping the results of a referendum; in so doing, it impaired the Office of the Lieutenant Governor and granted primary legislative power away from the Legislature.[5] Alberta's *Direct Legislation Act* was indeed repealed in 1958 after the

[5] See Peter W. Hogg, *Constitutional Law of Canada*, 3rd ed., loose-leaf (Toronto: Carswell, 1996), section 14.2(e).

deputy attorney general gave a legal opinion that the Act was *ultra vires* based on the Manitoba decision.

Another commentator has taken a very different perspective, pointing out in reference to the Alberta case, that it was the Legislature itself which had passed the Act by which it had agreed to restrict the scope of its lawmaking powers. If a Legislature wished to exercise its powers in a way which curtailed them, such as by enacting a *Charter of Rights*, then it was acceptable to do so. Also it was noted that the Alberta Act did not empower electors to enact or nullify laws; instead they were just given a voice in a somewhat filtered form.[6]

We believe that our proposal below on the consequences of a referendum avoids this constitutional uncertainty. Our proposal imposes a positive obligation upon the government to proceed with legislation that implements the results of a referendum vote.

Options

Before reaching this conclusion, the Committee considered several options for the consequences of a referendum vote, including the following:

- the vote is purely advisory—no legal obligations are imposed—in which case the vote would be a plebiscite;

- the government must introduce a bill for first reading which implements the results of the vote;

- a draft bill approved in the referendum is deemed to have passed second reading in the Legislative Assembly, and must be referred for consideration and report to a Committee of the Assembly;

- a draft bill approved by the electors should be enacted by the Legislative Assembly without substantive amendment, and then submitted to the Lieutenant Governor for royal assent;

- a draft bill approved in an initiative vote should be submitted directly to the Lieutenant Governor for royal assent; however, if legally necessary, the bill should be passed by the Assembly first.

We believe that the credibility of the referendum process is lessened substantially unless the vote has some kind of binding effect. We have already referred to the binding nature of initiative votes in British Columbia under the province's *Recall and Initiative Act*. We note also,

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[6] See Patrick Boyer, *Direct Democracy in Canada[:]The History and Future of Referendums* (Toronto: Dundurn Press, 1992), pp 84-85.

that in British Columbia and Saskatchewan, implementation by the government of the results of a discretionary referendum can include any or all of the following: the introduction or changing of programs or policies, and the introduction of a bill.

The Committee recommends that:

10. Where a measure is approved in a referendum, the government must introduce a bill to implement the results of the vote, as follows:

- **in the case of a simple question, the bill must be introduced for first reading;**

- **in the case of a referendum on a more defined proposition, the bill should be placed on the Orders and Notices paper for second reading. In accordance with the Standing Orders, the bill must previously have been printed and distributed.**

In both cases, the referendum-inspired bill should be considered a government bill, and should be pursued by the government at the earliest reasonable opportunity.

This procedure should apply whether the referendum is initiated by the Legislative Assembly or by citizens.

Implementation without Referendum

Where the petition requirements have been met, costs can be saved if the government has the option of implementing the substance of the petition as soon as practicable; in such a case a referendum would not be held.

We note that British Columbia's legislation provides for the referral of a successful initiative petition and applicable draft bill to a select standing committee on Legislative Initiatives. This committee has the option of recommending that the draft bill be introduced into the Legislative Assembly at the earliest practicable opportunity; the government must then comply with this recommendation. Under these circumstances, no referendum is held.

The Committee recommends that:

11. Where the petition requirements have been satisfied, the government should have the option of implementing the substance of the initiative through the introduction of a bill at the earliest

practicable opportunity. An initiative vote would accordingly not be held.

Referendum Commission

A number of witnesses proposed the creation of a Public Consultation Council or Referendum Review Council which would have jurisdiction to conduct judicial proceedings related to referenda. We support the notion of a specialized judicial body devoted to referenda. There would be ready expertise, and legal actions could be heard promptly.

The mandate of our proposed Referendum Commission should specifically state that it would have to determine if a proposed initiative or referendum question—in the sense of the proposed governmental or legislative action—was in compliance with the Constitution of Canada, which includes the *Charter of Rights and Freedoms, as well as with* the Ontario *Human Rights Code*. This mandate means that citizens will not be able to invoke the initiative procedure to seek an amendment to the *Charter* or the *Code*.

Decisions of the Commission would be appealable to the courts.

The Committee recommends that:

12. A Referendum Commission headed by justices of the Ontario Court (General Division)[7] should be established. Its members should be appointed by the Legislative Assembly of Ontario.

13. The Referendum Commission should have exclusive jurisdiction to hear any judicial proceeding relating to the proposed referendum legislation.

14. All applications for the issuance of an initiative petition should be referred by Elections Ontario to the Referendum Commission for the following determination: the Commission must determine whether the proposed initiative, if implemented, would be in compliance with the Constitution of Canada, including the Canadian Charter of Rights and Freedoms and the distribution of legislative powers between the federal and provincial levels of government. It must also determine if there is compliance with the Ontario Human Rights Code. If these

[7] Under Part IV of the *Courts Improvement Act, 1996*, which is not yet proclaimed in force, the name "Ontario Court (General Division)" will be changed to "Superior Court of Justice".

conditions are not satisfied, the application for the issuance of the petition must be refused.

In the case of other referenda, with the exception of constitutional referenda, the Commission should make the same kind of determination. If the above conditions are not met, the referendum should not proceed.

Note: The Commission also has responsibilities defined under Recommendations 16, 17, 21, 26, and 28.

Defining the Issues for Voting

Responsibility for Drafting Referendum Questions

Several mechanisms for the drafting of the text of a referendum question were put forward to the Committee. Proposed drafting bodies included

- the Legislative Assembly;
- an all-party Committee of the Assembly;
- the government;
- the group initiating the referendum (with respect to initiatives); and
- an independent commission.

Our recommendation below distinguishes between the initial drafting and final approval of a referendum question. We feel that confidence in the integrity of the referendum process would be enhanced if an independent commission—that is, the Referendum Commission—gave final approval to the wording of a question. The legitimacy of a question would also be strengthened if an opportunity for public input preceded final approval.

The Committee recommends that:

15. Where the Legislative Assembly or the government initiates a referendum, there should be public consultation, after which there should be a report to the Assembly on the wording of the ballot question.

16. After its tabling in the House, this report must be referred to the Referendum Commission, which would have the authority to either

confirm or vary the proposed wording. The Commission should have the same powers of approval with respect to the wording of proposed initiatives, which would initially be drafted by the initiative proponents.

Wording of Questions

Very little opposition was raised before the Committee to the notion that referendum questions should be geared to a clear Yes or No answer. We accordingly received proposals that referendum questions should begin with such words as "Do you support . . ." or "Do you approve . . .?" We also were advised that questions should be fair and neutral, not loaded or misleading.

The Committee recommends that:

17. The Referendum Commission should not give final approval to a referendum question unless it is expressed neutrally in clear and concise language, and unless it requires a Yes or No response.

Deciding the Outcome

Level of Turnout

Few submissions asked whether the validity of the results of a referendum should depend on a minimum level of voter turnout. Although we received proposals for minimum turnouts of 50% and 70% of eligible voters, we do not support such a requirement. We agree with those witnesses who contended that the same turnout rules should apply to referenda and elections, and who pointed out that no minimum participation percentages are set for federal and provincial elections.

Formula for Passage

Options presented to the Committee for determining the outcome of a referendum vote included

- a simple majority (50%+1) of votes cast;
- more than a simple majority of votes cast; and
- a simple majority of all eligible voters.

As well, we considered the option of a geographical component, where some degree of regional support would be required.[8]

Most of the submissions which looked at this issue favoured the first option. We agree that passage of a measure should require a simple majority of votes cast. As mentioned earlier, this majority formula is basic to our legislative system, applying to the passage of legislation as well as constitutional amendments by the Legislative Assembly.

The Committee recommends that:

18. In order for a referendum question to succeed, it must be approved by a 50%+1 majority of votes cast.

REFERENDUM OPERATIONS

Timing of Referenda

Submissions regarding the timing of referenda basically fell into one of three categories as follows:

- referenda should be held in conjunction with a provincial or municipal election;
- they should be held on a separate date; or
- both of the above options should be made available.

The principal advantage of the first option centres around the cost savings. The Chief Election Officer of Ontario testified that a province-wide referendum conducted outside a general election or another electoral event would cost approximately $40 million if an enumeration were involved. If a permanent voters' list were used, the cost would be in the neighbourhood of $28 million. The Chief Election Officer subsequently explained that if the referendum vote were combined with a general election, its cost might decrease to approximately $6 million. A precise figure would depend, however, on such factors as whether or not the same poll officials and poll locations, as well as the same advertising, would be used for both votes.

The second option of a separate date provides an opportunity to get focused public attention on the subject of a referendum. It eliminates the

[8] In British Columbia an initiative vote is successful if the initiative receives the support of a simple majority of the total number of registered voters in the province, and in at least 2/3 of the electoral districts.

possibility of voter confusion resulting from the intermingling of referendum and electoral issues. It also takes into account that referenda questions may deal with matters of some urgency where a vote should not be delayed.

We recognize the benefits of each of these options and feel that both should be made available to the Legislative Assembly and the provincial government when initiating a referendum. They should accordingly have the discretion to choose whatever date for voting they consider appropriate. In the case of an initiative, however, the referendum legislation should prescribe when each option would apply.

The Committee recommends that:

19. When making an order for the holding of a referendum, the Legislative Assembly and the provincial government should specify whether the referendum will be held in conjunction with a provincial or municipal election, or on a separate date.

20. Legislation should stipulate that an initiative vote must be held within a reasonable time after the petition requirements have been met—for instance, a maximum of 12 months could be prescribed. If at all possible, however, the vote should not be held on a separate date, but rather in conjunction with a municipal or provincial election.

Administering Referenda

Provincial elections in Ontario are conducted by the Office of the Chief Election Officer. That Office, for instance, coordinates the appointment, training, and payment of election officials, and arranges rentals, equipment, and supplies for all polling places. It should exercise similar functions in regards to referenda.

The Committee recommends that:

21. Elections Ontario should have the responsibility to oversee conducting a provincial referendum. Administrative matters falling outside the traditional mandate of Elections Ontario should either be handled by that Office or by the Referendum Commission.

Local Referenda

Municipalities in Ontario currently have a general power to submit questions on any municipal matter—that is, questions within the relevant council's jurisdiction—to their electors. These votes, however, are technically plebiscites, as the results do not have any binding effect.

We believe that the principles which justify the holding of referenda on a province-wide basis, such as accountability and adding to the legitimacy of public policy decisions, are applicable to the municipal level as well. Accordingly, municipal councils should have the same kind of discretion to hold binding referenda as is given to the Legislative Assembly under Recommendation 2.

We note that there is no general provision for citizen-initiated referenda at the local level. Such referenda are restricted to a few specific occasions—for instance, electors may petition for a vote regarding the fluoridation of a municipality's public water supply (10% signature threshold set forth in the *Fluoridation Act*) or with respect to the authorization or prohibition of the sale of liquor in the municipality (25% signature threshold prescribed in the *Liquor Licence Act*). The results of these referenda are binding.

We received a submission from the City of Rossland, British Columbia, which pointed out that electors in that city have the right to petition council to initiate a by-law or a by-law amendment. The petition in question must meet a 20% signature requirement, but there is no subsequent referendum. Instead, within one year of receiving such a petition, (a) council must prepare a by-law to implement the initiative; and (b) the by-law must be presented for first reading. (In Rossland, electors also have a period of 30 days to petition for a referendum on a by-law which has received third reading.)[9]

One witness directly referred to Rossland's procedures, stating that if the Government of Ontario wished to adopt a model for municipal referenda, the Rossland approach was a proven one to follow. Another submission endorsed the principles followed by Rossland (without specifically referring to the City). This submission proposed, for instance, that a procedure should be prescribed to enable citizens to initiate legislation. Under the proposal, once a valid initiative petition had been received, a by-law implementing the essence of the initiative would have to be introduced within a certain time period.

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[9] The Rossland by-law is currently being revised. Amongst other changes, *Bylaw #1962* (first reading 9 June 1997) would give Council the option of holding a plebiscite on an initiative question.

We agree that citizens should have the power to initiate legislation at the municipal level by means of petition. As stated earlier, initiatives can serve as a means of empowering individuals and groups within the political process. But consistent with our views on initiatives at the provincial level and the just-described procedures under the *Fluoridation Act* and the *Liquor Licence Act*, a successful petition should trigger a referendum; legislative action, then, should be preceded by a successful referendum. The signature threshold for a petition and the time period for signature-gathering should be the same as for province-wide initiatives.

The vote itself, whether it be an initiative vote or one ordered by council, should be held either in conjunction with a municipal election or on a separate date. The framework for the timing of provincial referenda set forth in Recommendations 19 and 20 should accordingly be adapted to the holding of municipal referenda.

The Committee recommends that:

22. The council of a municipality should have the discretion to order the holding of a referendum on any matter within the council's jurisdiction.

23. Where not otherwise authorized, voters in a municipality should have the statutory authority to require, by petition, the holding of a referendum on any matter within the jurisdiction of the municipal council.

24. A successful municipal petition under Recommendation 23 should require the signatures of at least 10% of the eligible voters in the municipality.

25. There should be a maximum of 180 days to gather the signatures on a petition from the date of its issuance.

26. The municipal referendum question must receive the final approval of the Referendum Commission. Such approval should not be given unless the question is expressed neutrally in clear and concise language, and unless it requires a Yes or No response.

27. The results of a referendum held under Recommendations 22 or 23 should be binding on the municipal council.

Alternative Methods of Voting

Several submissions addressed the issue of alternative voting methods, such as voting electronically or by mail or telephone. Some submissions highlighted the potential cost savings, whereas others were concerned about the lack of secrecy and the opportunity for abuse which would lead to inaccurate results.

We believe that alternative voting methods should be made available, if the Referendum Commission so agrees. We note that the *Municipal Elections Act 1996* permits such methods.

The Committee recommends that:

28. The Referendum Commission should have the power to authorize electors to use an alternative voting method, such as voting electronically or by mail or telephone, that does not require electors to attend at a voting place in order to vote.

Campaign Regulation: Financing

The comments made to the Committee on the financing of a referendum campaign focused on the issue of spending limits. Opinion was divided on the issue, although more favoured limits than not. One witness referred to referendum practices in Canada and the United States, including the referendum on the Charlottetown Accord, and concluded that correlations between spending and referendum results were very hard to draw.[10]

It is the Committee's view that fairness in a referendum campaign would be fostered if restrictions on spending and contributions were prescribed. Financing limits already apply to the operation of election campaigns in Ontario, as illustrated by the following:

Campaign Expenses: The spending limit for a registered party in an election is $0.40 for each elector entitled to vote in all the electoral districts in which there is an official candidate of that party. There are also spending limits for candidates.[11]

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[10] This witness recommended that for the "first go-round" referendum legislation in Ontario might not include spending limits.

[11] The candidate's spending limit includes all expenses incurred by the candidate's campaign organization, and by others on the candidate's behalf during the campaign period (e.g. the constituency association). The general ceiling is determined by the following formula: $2 for each of the first 15,000 electors entitled to vote in the constituency; $1 for each of the next 10,000 electors; and $0.25 for each of the remaining electors.

Advertising expenses are one kind of campaign expense, and are incorporated in the above limits; thus, there is no separate maximum applicable to advertising. In general, campaign advertising is limited to a period of 21 days, ending two days before election day.

Campaign Contributions: In any year, a person, corporation, or trade union may contribute up to $4,000 to each registered provincial party, and up to $750 to any registered constituency association; however, the total contributions to all constituency associations of the same party must not exceed $3,000. During an election, extra contributions may be made. An additional $4,000 may be given to each party, and up to $750 to any candidate; but the total contributions to all candidates of the same party must not exceed $3,000.

Ontario's election financing legislation also provides for the disclosure of campaign expenses and income. The chief financial officer of every registered party, constituency association, and candidate must file with the Commission on Election Finances a financial statement of election income and expenses. This statement and all other documents filed with the Commission are public records and must be made available for public inspection. The Commission also must publish a joint summary of the election income and expenses of each candidate and constituency association endorsing that candidate, in a newspaper circulated in the candidate's electoral district.

The above restrictions should be adapted to referendum campaigns. In so recommending, we recognize that restrictions on campaign activity must not violate the guarantees of freedom of expression and freedom of association under the *Charter of Rights and Freedoms*.

The Committee recommends that:

29. Spending and contribution limits, as well as disclosure requirements, should be prescribed for a referendum campaign, and should mirror provisions applicable to provincial election campaigns in Ontario. More particularly, each recognized organization which seeks to participate in a referendum should have the same rights and obligations as a registered political party under the provincial *Election Finances Act*.

30. The Commission on Election Finances should have the responsibility to regulate the financial aspects of referenda, including the supervising of limits on campaign expenses and contributions, and the recognizing of organizations referred to in Recommendation 29.

MINORITIES

As mentioned earlier, the issue of minority rights was a major concern of witnesses critical of referenda. This concern was expressed in the recommendation that the government not permit referenda to reduce minority rights, such as the right to French-language services.

One witness contended that when questions are boiled down to "yes" or "no" answers, the tradeoffs and compromises which enable minorities to exert some influence on the social consensus are discouraged. This organization then stated that by promoting no-compromise, winner-take-all solutions, a referendum can encourage majorities to take unfair advantage of their majority position, and to abuse minorities. It also thought that in a representative democracy as opposed to a "plebiscitary democracy", the translation of complaints into votes at election time gave politicians an incentive to reach some kind of accommodation with minorities who felt aggrieved.

Another perspective held that even if one could go to court and have a referendum decision overturned as infringing minority rights guaranteed by the Constitution, the kind of debate that occurred during the referendum campaign itself could be very damaging to society. Also, this witness felt that referenda might be used to change the Constitution in a way which diminished minority rights.

Other witnesses, however, highlighted the importance of the *Constitution Act, 1982*, which includes the *Canadian Charter of Rights and Freedoms*. These consitutional provisions provide entrenched protection for minority rights and aboriginal rights. As one witness remarked, prior to the adoption of the *Charter* the debate surrounding the impact of referenda on minority rights would have been much more extensive.

We agree that the protection offered by provisions in the *Constitution Act, 1982*—having as they do, a constitutional and not just a statutory basis—is significant. We also wish to reaffirm the importance of the Referendum Commission which we recommended earlier. In the case of all applications for the issuance of an initiative petition, the Commission would have the specific mandate to determine whether the initiative would be in violation of the Constitution of Canada, which includes not only the *Charter of Rights and Freedoms*, but also protections for denominational education rights and aboriginal and treaty rights. The Commission would have the further responsibility of determining if there were a violation of the Ontario *Human Rights Code*. If any violations were found, the petition would not be issued.

In the case of other referenda, except those pertaining to the Constitution itself, the Commission would have to determine if the proposed

referendum question—in the sense of the proposed governmental or legislative action—met the same conditions. Otherwise, the referendum could not proceed.

Legislative and Electoral Reform

Although our hearings focused on referenda, several submissions raised issues of legislative and electoral reform. They did so, partially in response to the Government's Consultation Paper, which asked if citizens should have the right to petition for the recall of their MPP. The Consultation Paper defined recall as a form of initiative in which citizens might propose and then decide in a referendum to remove an elected official from office.

One view put forward to the Committee held that the issue of recall could be divorced from that of referenda. This is our assessment as well; although both concepts require some kind of petitioning process, recall does not focus upon citizen participation in public policy decision-making. Rather it is electoral in nature; a seat is declared vacant and a by-election is held to fill the vacancy. We do wish to note, however, that submissions were divided over whether recall should be adopted in Ontario.

With respect to other reforms, a system of proportional representation was promoted before the Committee as a means of enhancing accountability and confidence in our democratic system. We believe that the issues of electoral reform and recall raise very important questions and should be the subject of a separate set of public hearings.

The Committee recommends that:

31. The Standing Committee on the Legislative Assembly should be authorized to review and report on the issues of electoral reform and recall, in accordance with a schedule to be determined by the Committee. Public hearings must form part of the review process.

List of Recommendations

Concept of Referenda

1. The Government of Ontario should introduce legislation authorizing the holding of provincial referenda. Such referenda should be permissible on any topic within the jurisdiction of the Province of Ontario, but should occur within the legislative framework set forth in the recommendations which follow. The topic of the referendum must be a measure which requires the passage of a bill (with the exception of a constitutional referendum, where implementation would require the passage of a constitutional resolution). (4)

Initiation and Legal Effect of Referenda

2. The Legislative Assembly should have the discretion to order the holding of a referendum on any matter of public concern. (6)

3. The government should not introduce in the Legislative Assembly an amendment to the Constitution of Canada, unless a referendum has first been conducted with respect to the subject matter of that amendment, and approval of the voters has been obtained. (9)

4. The government should not introduce in the Legislative Assembly a bill that imposes a new tax, unless a referendum has first been conducted with respect to the imposition of the tax in question, and approval of the voters has been obtained. An exception to this referendum requirement should apply in the case of revenue neutral changes in taxation. (11)

5. Statutory authority should be provided for the holding of citizen-initiated referenda, whereby citizens by petition may require that a referendum be conducted on any matter within the jurisdiction of the Legislature. (12)

6. An application for the issuance of an initiative petition should be made to the Office of the Chief Election Officer of Ontario (Elections Ontario). The application procedure should require a declaration that the applicant is eligible to vote in a referendum in Ontario. (13)

7. An initiative petition must be signed by at least 10% of the eligible voters in the province in order for the initiative to be put on a referendum ballot. (13)

8. There should be a maximum period of 180 days to gather the signatures on a petition from the date of its issuance, and to submit it to the Legislative Assembly. (14)

9. It should be an offence for signature canvassers to receive any remuneration for the gathering of signatures or to provide any kind of inducement to an individual to sign, or to refrain from signing, a petition. A related offence should state that an individual must not accept an inducement to sign, or to refrain from signing, a petition. (14)

10. Where a measure is approved in a referendum, the government must introduce a bill to implement the results of the vote, as follows:

- in the case of a simple question, the bill must be introduced for first reading;

- in the case of a referendum on a more defined proposition, the bill should be placed on the Orders and Notices paper for second reading. In accordance with the Standing Orders, the bill must previously have been printed and distributed.

  In both cases, the referendum-inspired bill should be considered a government bill, and should be pursued by the government at the earliest reasonable opportunity.

  This procedure should apply whether the referendum is initiated by the Legislative Assembly or by citizens. (18)

11. Where the petition requirements have been satisfied, the government should have the option of implementing the substance of the initiative through the introduction of a bill at the earliest practicable opportunity. An initiative vote would accordingly not be held. (18)

12. A Referendum Commission headed by justices of the Ontario Court (General Division) should be established. Its members should be appointed by the Legislative Assembly of Ontario. (19)

13. The Referendum Commission should have exclusive jurisdiction to hear any judicial proceeding relating to the proposed referendum legislation. (19)

14. All applications for the issuance of an initiative petition should be referred by Elections Ontario to the Referendum Commission for the following determination: the Commission must determine whether the proposed initiative, if implemented, would be in compliance with the Constitution of Canada, including the Canadian Charter of Rights and Freedoms and the distribution of legislative powers between the federal and provincial levels of government. It must also determine if there is compliance with the Ontario Human Rights Code. If these

conditions are not satisfied, the application for the issuance of the petition must be refused.

In the case of other referenda, with the exception of constitutional referenda, the Commission should make the same kind of determination. If the above conditions are not met, the referendum should not proceed. (19)

Defining the Issues for Voting

15. Where the Legislative Assembly or the government initiates a referendum, there should be public consultation, after which there should be a report to the Assembly on the wording of the ballot question. (20)

16. After its tabling in the House, this report must be referred to the Referendum Commission, which would have the authority to either confirm or vary the proposed wording. The Commission should have the same powers of approval with respect to the wording of proposed initiatives, which would initially be drafted by the initiative proponents. (20)

17. The Referendum Commission should not give final approval to a referendum question unless it is expressed neutrally in clear and concise language, and unless it requires a Yes or No response. (21)

Deciding the Outcome

18. In order for a referendum question to succeed, it must be approved by a 50%+1 majority of votes cast. (22)

Referendum Operations

19. When making an order for the holding of a referendum, the Legislative Assembly and the provincial government should specify whether the referendum will be held in conjunction with a provincial or municipal election, or on a separate date. (23)

20. Legislation should stipulate that an initiative vote must be held within a reasonable time after the petition requirements have been met—for instance, a maximum of 12 months could be prescribed. If at all possible, however, the vote should not be held on a separate date, but rather in conjunction with a municipal or provincial election. (23)

21. Elections Ontario should have the responsibility to oversee conducting a provincial referendum. Administrative matters falling outside the traditional mandate of Elections Ontario should either be handled by that Office or by the Referendum Commission. (23)

22. The council of a municipality should have the discretion to order the holding of a referendum on any matter within the council's jurisdiction. (25)

23. Where not otherwise authorized, voters in a municipality should have the statutory authority to require, by petition, the holding of a referendum on any matter within the jurisdiction of the municipal council. (25)

24. A successful municipal petition under Recommendation 23 should require the signatures of at least 10% of the eligible voters in the municipality. (25)

25. There should be a maximum of 180 days to gather the signatures on a petition from the date of its issuance. (25)

26. The municipal referendum question must receive the final approval of the Referendum Commission. Such approval should not be given unless the question is expressed neutrally in clear and concise language, and unless it requires a Yes or No response. (25)

27. The results of a referendum held under Recommendations 22 or 23 should be binding on the municipal council. (25)

28. The Referendum Commission should have the power to authorize electors to use an alternative voting method, such as voting electronically or by mail or telephone, that does not require electors to attend at a voting place in order to vote. (26)

29. Spending and contribution limits, as well as disclosure requirements, should be prescribed for a referendum campaign, and should mirror provisions applicable to provincial election campaigns in Ontario. More particularly, each recognized organization which seeks to participate in a referendum should have the same rights and obligations as a registered political party under the provincial *Election Finances Act*. (27)

30. The Commission on Election Finances should have the responsibility to regulate the financial aspects of referenda, including the supervising of limits on campaign expenses and contributions, and the recognizing of organizations referred to in Recommendation 29. (27)

31. The Standing Committee on the Legislative Assembly should be authorized to review and report on the issues of electoral reform and recall, in accordance with a schedule to be determined by the Committee. Public hearings must form part of the review process. (29)

APPENDIX A

Dissenting Opinion from the Liberal Members

Dissenting Opinion from the Liberal Members

The Committee members of the Liberal caucus do not oppose referenda per se. We are very supportive of referenda and plebiscites when they are initiated by democratically elected local governments - a longstanding tradition in this province and indeed across the country.

What the Committee members of the Liberal caucus are opposed to is the government's intention to introduce provincial referenda on issues that are more appropriately handled without resorting to the expensive and potentially manipulative referenda process. Democratically elected governments must have the courage to confront and deal with difficult issues and to make tough decisions -- even those that might be unpopular. We do not feel that it is appropriate for an elected government to avoid its responsibility for making tough decisions by seeming to hand them off to the general public.

This is the case particularly with the government's intention to mandate referenda on new taxes. We believe, as this Report mentions, that governments will continue to rise and fall on the basis of the popularity of their decisions. In the case of taxes, we believe it is impossible to predict the kinds of circumstances which might arise that may lead a government to impose such an invariably unpopular measure, but that it must not be hamstrung in its ability to do so.

Nevertheless, we would be willing to support the judicious use of provincial referenda to address non-partisan issues of general importance to all Ontarians, such as national unity.

The serious and potentially very powerful tool of referenda should be used only in a non-political manner, on condition that the referendum question is formulated and unanimously agreed to by a committee composed of members of all three political parties. Only in this way do we believe we can ensure the integrity of the referenda process.

We cannot agree with what we believe this government wants to do, which is to put various questions to referenda that will advance the government's own political agenda and that will allow it to walk away from its responsibilities for the consequences that result.

The government's ambiguity in this matter is apparent in its handling of the issue of amalgamation of the cities in the Greater Toronto Area. On the one hand, they are proposing the present motion to enshrine provincial referenda on all kinds of topics of interest to this government. On the other hand, they have proceeded with their plans to amalgamate the GTA into a Mega-city, ignoring the overwhelmingly negative results of a municipal referendum on the issue.

The Liberal members believe that if the government genuinely believed in referenda, it would have taken into account the objections of the municipal voters in the GTA to the mega-city. The government's inconsistency on this issue can be seen as hypocritical and high-handed to the voters in the GTA who believe their concerns have been ignored, and

casts into doubt the government's commitment to being responsive to outcomes it has no control over and that do not fit into its agenda.

Likewise, given the evidence of this most recent experience, the Liberal members cannot support the use of referenda as a tool of a government to 'cherry-pick' those sensitive issues that it wishes to position as being the direct responsibility of the electorate. A democratically elected government should not be able to walk away from its responsibility for tough decisions by offloading them onto the people who elected it.

Finally, the Liberal members are very concerned that this motion does nothing to protect the rights of Ontario minorities. We are a multicultural and diverse society, yet this motion includes no safeguards from the hatred, intolerance or prejudice that can be stirred up by referenda on unpopular issues. If this government were to call a referendum on the issue of bilingualism and the funding of French language services, we are concerned about how the rights of the Francophone minority would be protected.

The Liberal members feel that a nominally independent, government-appointed Referenda Commission would not be sufficient to safeguard the greater public interest in these matters. Only by subjecting all referenda activities to public scrutiny can their non-biased nature be assured. Consequently, we still believe that securing all-party agreement on these issues is the best way to maintain public confidence in the integrity of the entire process.

APPENDIX B

Dissenting Opinion from the NDP Members

Dissenting Opinion from the NDP Members

We appreciate having had the opportunity to examine the issue of referenda. We support the majority of the recommendations in the report which call upon the government to put in place a refendum law to govern the process of referenda as well as to allow for citizen initiated referenda in the belief that they will help to address the high level of cynicism which many members of the public feel towards all politicians. We are however ourselves more than a little cynical of the Conservative members' reasons for proceeding with this initiative and wish to state our dissent on a few key points.

We believe that the parliamentary process should remain the basis of our system of government. Indeed we believe that there are many improvements that can and should be made to that system to render it more democratic and we look forward to the committee continuing its work on the broader issue of legislative and electoral reform as set out in recommendation 31.

We are in favour of referenda as a tool of democratic expression. We believe it is best used on major issues of concern to the public and not as a replacement for the parliamentary process. When used wisely and appropriately the referendum process can help enhance the democratic process and be a useful tool for resolving difficult issues, ensuring accountability to citizens and determining the public will on a given issue.

A referendum law will never replace the need for responsible, democratically elected legislators who take responsibility for their actions; nor will it diminish the importance of ministerial accountability to the Legislature and to the public.

We therefore disagree with the notion of enshrining in law a requirement that the government must hold referenda on certain questions and believe that it is up to the government and the Legislature of the day to decide whether an issue should be put to a referendum. We dissent from recommendations 3 and 4 in this report which would require the government to hold a referendum on constitutional changes and on new taxes.

We believe that on major constitutional questions it is appropriate, even necessary, to hold a referendum. We supported the decision by the first ministers and the House of Commons to hold a referendum on the Charlottetown Constitutional Accord. However there may be constitutional issues on which the public will could be easily ascertained without a referendum and we would not want to see the government bound to the delay and expense [some $28 million, even with a permanent voters' list] which a mandated referendum would require. The Legislature should decide whether a particular constitutional issue should go to a referendum.

We disagree strongly with the view of the Conservative majority which would require a referendum in order to increase taxes. We agree that the level of taxation is fundamental to the well being of our society but so are the other factors which together create a good society. Taxation policy cannot and should not be separated from social and justice policy. Why should it be necessary to hold a referendum in order to increase taxes but not in order to cut spending to our health care, education, social service or justice systems? And even within the area of taxation how can you separate, as the Conservative members are trying to do, taxes from fees?

The differences which political parties and individual politicians hold on these issues are at the heart of our system of responsible government and key to the accountability which all of us owe the public.

We support the notion of citizen initiated referenda and believe that the 10% threshold and the six month timeline for the gathering of signatures provides a reasonable benchmark in determining whether there is sufficient public support to engage the referendum process. We also agree with the provision for municipal referenda. We dissent from recommendation 7 to the extent that it does not go far enough in dealing with the need for regional referenda where the issue and the impact is regional but provincial legislation is required to implement the change.

The example we gave in committee is the creation of the megacity in Metropolitan Toronto. We believe that in such a circumstance the 10% threshold for a citizen initiated referendum should be applied to the eligible voters inside Metro Toronto and not across the entire province.

We cannot emphasize enough the need to ensure that any referenda process respects the rights of the various minorities in Ontario. We stress the need to put in place a mechanism to ensure that as set out in the report.

We urge the Government to accept our proposals as it drafts legislation on this important issue.

Respectfully submitted,

Tony Silipo, MPP---Dovercourt

Bud Wildman, MPP---Algoma

APPENDIX C

List of Witnesses appearing before the Standing Committee on the Legislative Assembly's Hearings into the Issue of Referenda

LIST OF WITNESSES APPEARING BEFORE THE STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY'S HEARINGS INTO THE ISSUE OF REFERENDA

MONDAY, SEPTEMBER 9, 1996:

From the Office of the Chief Election Officer: Warren R. Bailie, Chief Election Officer.

From the Ministry of the Attorney General: Michel Hélie, Counsel, Constitutional Law Branch.

Patrick Boyer.

From the Ontario Taxpayer's Federation: Paul Pagnuelo, Executive Director.

From the Reform Party of Canada: Scott Reid, Senior Caucus Researcher.

TUESDAY, SEPTEMBER 10, 1996:

Ed Harper, M.P., Simcoe Centre.

From the Brampton Taxpayers Coalition: Ernest MacDonald.

Paris Gardos.

From Taxpayers Coalition Burlington Inc.: Frank Gue, Education Chair.

From Ontarians for Responsible Government: Colin T. Brown, President.

From the Canadian Taxpayers Federation: Jason Kenney.

Ted White, M.P., North Vancouver.

David Mitchell.

From Direct Democracy Group: William S. Wills, Chairman; Ernst Kneisel.

Darin David Barney.

From the Tax Equity Alliance: William G. Clark, Chair; Carol Burtin-Fripp, Vice-chair.

From the Taxpayers Coalition of Caledon: Don Crawford, Chairman.

From the Ontario Catholic Teachers Association: Marlies Rettig, President; Claire Ross, General Secretary; Paul Cavalluzzo, Counsel.

WEDNESDAY, SEPTEMBER 11, 1996:

From the Freedom Party of Ontario: Robert Metz, President; Lloyd Walker, Manager, Special Projects.

From the London-Middlesex Taxpayers; Coalition: Jim Montag, Chairperson.

John Hogg.

Greg Vezina.

From Democracy Watch: Duff Conacher, Coordinator.

From Association des enseignantes et des enseignants franco-ontariens: Guy Matte, directeur général; Roger Régimbal, président.

From Citizens for Fair Taxes: Frank Spink, Chairman.

From the Communist Party of Canada (Marxist-Leninist), Ontario Regional Committee: Anna Dicarlo.

THURSDAY, SEPTEMBER 12, 1996:

From the City of Sault Ste. Marie: Stephen E. Butland, Mayor.

Andrew C. Staples.

From the Uxbridge Ratepayers Association: June Paton Davies; Anne Holmes.

John Deverell.

From the Hastings County Ratepayers Association: Trueman Tuck.

From the Power Workers' Union: John Murphy, President; Chris Dassios, Legal Counsel.

From the Progressive Conservative Youth Federation of Canada: Tasha Kheiriddin, President; Walied Soliman, President, Ontario Progressive Conservative Youth Association.

From Bayview Glen Ratepayers' Group: Howard Shore, President.

David Vallance.

From the Canadian Civil Liberties Association: Alan Borovoy.

From Agree Inc: Rick Weiler, Partner.

From the Ontario Separate School Trustees' Association: Patrick J. Daly, President; Thomas Reilly, General Secretary for the Ontario Conference of Catholic Bishops; Patrick Slack, Executive Director; Monsignor Dennis Murphy, Director of Religious Education.

From the Ontario Secondary School Teachers' Federation: Jim McQueen, Vice President; Michael Walsh, Executive Officer.

WEDNESDAY, NOVEMBER 6, 1996:

Max J. Radiff.

From the Association canadienne-française de l'Ontario: Daniel St-Louis, André J. Lalonde, président.

Maximus Perera.

APPENDIX D

Federal/Provincial/Territorial Legislation re: Referenda

FEDERAL/PROVINCIAL/TERRITORIAL LEGISLATION RE: REFERENDA

The table below outlines key legislative provisions respecting the holding of *Canada-wide* and *provincial/territorial-wide* referenda. Ontario and Nova Scotia are excluded from the table as they have not enacted legislation authorizing provincial referenda.

For a comprehensive understanding of these provisions, reference should be made to the statutes themselves.

Jurisdiction	*Legislation*	*Who Initiates a Referendum?*	*Subject Matter*	*Who Writes the Question?*	*Results Binding on Government?*
Canada	Referendum Act	Cabinet	any constitutional matter	drafted by gov't but after consultation with opposition; approved by Parliament	No
Alberta	Election Act	Cabinet	any matter[1]	Cabinet	No
Alberta	Constitutional Referendum Act	Cabinet, preceding any vote in the Legislature on a resolution for a constitutional amendment[2]	constitutional amendments	drafted by Cabinet, approved by Legislature	Where a measure is approved or disapproved by a majority of votes cast, result is binding on Gov't initiating referendum: in particular, Gov't must, as soon as practicable, take steps considered necessary or advisable to implement results of referendum

[1] Technically, the question must relate to the introduction or amendment of legislation.

[2] In addition to providing for mandatory constitutional referenda, the Alberta Act authorizes permissive referenda whereby the government may choose to hold a referendum on any constitutional matter.

Jurisdiction	Legislation	Who Initiates a Referendum?	Subject Matter	Who Writes the Question?	Results Binding on Government?
Alberta	Alberta Taxpayer Protection Act[3]	Cabinet, preceding introduction of bill imposing general sales tax	sales tax	drafted by Cabinet, approved by Legislature	Gov't can introduce bill imposing general sales tax only if Chief Electoral Officer announces result of referendum on this issue first; legislation incorporates above provision in Constitutional Referendum Act on binding nature of referenda
British Columbia	Referendum Act	Cabinet	any matter of public interest or concern	Cabinet	Where a measure is approved or disapproved by a majority of votes cast, result is binding on Gov't initiating referendum: in particular, Gov't must, as soon as practicable, take steps considered necessary or advisable to implement results of referendum including any or all of the following: • introducing or changing programs or policies; • introducing legislation during

[3] On June 2, 1997, the Alberta Government introduced for first reading Bill 26, the *No Tax Increase Act*. The new Act would apply to bills which sought to increase the tax rates set out in certain sections of the *Alberta Income Tax Act* or other tax rates prescribed by regulation. Before such a tax bill could be introduced in the Legislative Assembly, the increase in question would have to be approved by a majority of the votes cast in a referendum. Notwithstanding this requirement, a tax rate might be increased (1) where necessary to give effect to a restructuring of taxation authority between the federal government and provincial governments; and (2) where not designed to generate an overall increase in provincial revenue. In general, the referendum would be initiated by Cabinet, with the question(s) drafted by Cabinet and approved by the Legislature if it were in session.

Jurisdiction	Legislation	Who Initiates a Referendum?	Subject Matter	Who Writes the Question?	Results Binding on Government?
					first session after referendum results are known
British Columbia	Recall and Initiative Act[4]	On receipt of draft bill and initiative petition signed by at least 10% of the registered voters in each electoral district, a select standing committee on Legislative Initiatives must either: • recommend that the draft bill be introduced, in which case the Gov't must introduce the bill at the earliest practicable opportunity;[5] or • refer the petition and draft bill to the Chief Electoral Officer, who must hold an initiative vote.	any matter within the jurisdiction of the Legislature	whoever starts campaign to sign petition[6]	Initiative vote is successful if • more than 50% of the registered voters in the province support the initiative; and • more than 50% of the registered voters in at least 2/3 of the electoral districts also support it Gov't must then introduce the bill at the earliest practicable opportunity[7]

[4] As revealed in the report, the Standing Committee on the Legislative Assembly considers the concept of recall to be separate from that of referenda. Accordingly, only initiative provisions of the British Columbia Act are summarized in the table.
[5] If the bill is for the appropriation of public revenue or the imposition of a tax, the recommendation of the Lieutenant Governor must be requested.
[6] The draft bill, however, must be written in a clear and unambiguous manner. This requirement is a precondition to the issuance of an initiative petition by the Chief Electoral Officer.
[7] Ibid.

Jurisdiction	Legislation	Who Initiates a Referendum?	Subject Matter	Who Writes the Question?	Results Binding on Government?
British Columbia	Constitutional Amendment Approval Act	Cabinet, preceding tabling in Legislature of resolution for a constitutional amendment	constitutional amendments	Cabinet	Gov't cannot introduce resolution for a constitutional amendment unless a referendum has first been conducted under the Referendum Act with respect to the matter
Manitoba	Balanced Budget, Debt Repayment and Taxpayer Protection Act	Cabinet, preceding introduction of bill increasing taxes under Health and Post Secondary Education Tax Levy Act; Income Tax Act; Retail Sales Tax Act; or Part I of Revenue Act[8]	possible tax increases	Cabinet	Gov't cannot introduce a bill to raise taxes under certain specified Acts without holding a referendum first, where a majority of votes cast support the tax increase
Newfoundland	Election Act[9]	Cabinet	any matter of public concern	Cabinet	No
New Brunswick	Elections Act	Cabinet	any matter	Cabinet	No
Prince Edward Island	Plebiscites Act	Cabinet	any matter of public concern, or respecting any provincial Act, any	Cabinet	No

[8] There are two exceptions to this referendum requirement: (1) where the increase in tax rates is designed to restructure the tax burden, but is revenue neutral; and (2) where the increase results from changes in federal tax laws and is necessary to maintain provincial revenue or to give effect to a restructuring of federal/provincial taxation authority.

[9] Under another Act—the Elections Act, 1991—the Cabinet may direct that a plebiscite or a referendum be held on any matter of public concern. This provision has not been proclaimed in force.

Jurisdiction	Legislation	Who Initiates a Referendum?	Subject Matter	Who Writes the Question?	Results Binding on Government?
			order in council made pursuant to any such enactment, or any question of enforcement of any such enactment		
Quebec	Referendum Act	(1) Cabinet with the approval of the National Assembly, or (2) Cabinet, after the National Assembly passes a bill	any matter	(1) Cabinet with approval of the National Assembly; or (2) National Assembly by passing a bill containing text of question	No; however, a bill adopted by the National Assembly which says that it must be submitted to a referendum cannot be presented for assent until the referendum has been held
Saskatchewan	Referendum and Plebiscite Act	referendum or plebiscite by Cabinet plebiscite only by Legislature plebiscite when 15% of electors sign a petition	any matter of public interest or concern any question any matter within the jurisdiction of the Government of Saskatchewan	Cabinet Legislature whoever starts the campaign to sign the petition[10]	In the case of a referendum, if a measure is approved or disapproved by more than 60% of votes cast (where at least 50% of eligible voters voted), result is binding on Gov't initiating referendum: in particular, Gov't must, as soon as practicable, take steps considered necessary or advisable to implement results of referendum including any or all of

[10] On an application by the Minister responsible for the administration of the Act, the Court of Queen's Bench may approve the question or change the wording (1) to express more clearly the intent of the petitioners; or (2) where possible, to bring the question within provincial jurisdiction. The Court may also direct that no plebiscite be held, where the question concerns a matter beyond provincial jurisdiction.

Jurisdiction	Legislation	Who Initiates a Referendum?	Subject Matter	Who Writes the Question?	Results Binding on Government?
					the following: • introducing or changing programs or policies; • introducing legislation during first session after referendum results are known
Northwest Territories	Plebiscite Act[11]	Government	any matter	Government	No
Yukon	Plebiscite Act[12]	Government	any matter	Government	No

[11] The recent "Public Vote" on guaranteed equal representation for men and women in the Nunavut Legislative Assembly was not conducted under the Plebiscite Act, but rather under an agreement between the three signatories to the Nunavut Political Accord—namely, the Government of Canada, the Government of the Northwest Territories, and Nunavut Tunngavik Incorporated. The Plebiscite Act does not authorize a plebiscite in only part of the Northwest Territories and has a longer residency requirement for voter eligibility (three years) than was applied to the public vote (one year).

[12] Part I of the Public Government Act repeals the Plebiscite Act, but has not come into force. It authorizes the Legislative Assembly to direct by resolution that a referendum be held on any matter. The resolution must meet certain conditions—for instance, it must have the support of at least 2/3 of the Members present; contain the terms of the referendum question(s); and state whether or not the results of the referendum will be binding upon the Assembly.